U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

PUBLIC COPY

FILE: [redacted] Office: Miami Date: FEB 22 2001

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

[redacted]

identical data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 12, 1958 in Mexico. The applicant's father, [redacted], was born in Waco, Texas, in February 1922. The applicant's mother, [redacted], was born in March 1930 in Mexico and never had a claim to United States citizenship. The applicant's parents married each other in August 1948. The applicant claims that he acquired United States citizenship at birth under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director denied the application after determining the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g), at the time of the applicant's birth.

On appeal, counsel asserts that the applicant did present more than sufficient evidence in support of his claim to U.S. citizenship. Counsel states that the Service is looking for a perfect application with perfect evidence. Counsel states that the applicant's mother provided clear and convincing testimony which was extremely credible and actually compelling. Counsel provides a statement from [redacted] dated June 7, 2000 in which he states that the applicant's father (hereafter referred to as Teodoro) worked for him on his farms from 1949 to 1958. This contradicts Teodoro's statement that he worked for [redacted] from 1949 until 1964.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986 provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

The record contains an affidavit from [redacted] in which he asserts that he resided in the United States from 1922 to 1925, from 1927 to 1930 and from 1949 until the applicant's birth in 1958. Teodoro

states that he worked on a ranch owned by [redacted] for 15 years, until 1964, following his return to the United States in 1949 and then on other ranches in the area.

On appeal, counsel states that [redacted] worked at the [redacted] Farms/Ranch where he was paid by way of cash with free room and board.

Social Security records reflects that [redacted] began FICA earnings in 1961 and continued through 1982. [redacted] asserts that all of his earnings were as a farm laborer. The record is silent as to why his social security earnings only started in 1961 when he was in the 12th year of full-time employment for [redacted] and then those earnings were continuously registered through 1982 when he performed the same type of work, farm labor. The record fails to contain evidence of any social security earnings between 1949 and 1961 when he alleges that he was a full-time employee for [redacted]

Although the following referenced documentation is not present in the record, the application indicates that the applicant was lawfully admitted for permanent residence in February 1972 on the basis of an immigrant visa. The application also indicates that the applicant was the beneficiary of an alien relative visa petition filed by his U.S. citizen father. Normally the American Consulate will carefully examine any possible claim an alien has to United States citizenship prior to issuing such person an immigrant visa. United States citizens do not need visas to enter the United States.

Further, it is noted that the applicant's younger sisters [redacted] who was born in Mexico in October 1962 and [redacted] who was born in Mexico in 1967, immigrated at the same time as the applicant, and became a naturalized U.S. citizens in January 1998 and September 1996 respectively. If the present applicant had a valid claim to U.S. citizenship at birth so would Juanita and Enedelia and they would not have needed to naturalize to obtain U.S. citizenship.

The district director thoroughly discussed the affidavits from several relatives and other persons contained in the record and that discussion need not be repeated here. Counsel asserts that such affidavits comprise a preponderance of the evidence. The Associate Commissioner is not persuaded and the affidavits do not overcome previous determinations made by the Service and the Department of State. The applicant and his siblings were classified as aliens in 1972 and were issued immigrant visas at a time when probative evidence was more readily available and memories were fresher. At least two of those siblings have become naturalized U.S. citizens. U.S. citizens are not eligible to naturalize.

The Associate Commissioner would relish the opportunity to review the applicant's full Service file and the files of his siblings to see why the American Consulate failed to determine that the applicant and his siblings had acquired U.S. citizenship in 1972, some 29 years earlier, and that they needed immigrant visas to enter the United States. Further, the record is silent as to why the applicant waited nearly 25 years (September 1997) to file the present application claiming to be a U.S. citizen when it is apparent that his other siblings had no such claim. Should this record appear before the Associate Commissioner again, it must be accompanied by the applicant's complete immigrant visa file, [redacted] along with the files of [redacted] and [redacted] for review.

Absent such supportive evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that [redacted] was physically present in the United States for the required period prior to the applicant's birth.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.